

Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

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In the Matter of

DOCKET FILE COPY ORIGINAL

Elehue Kawika Freemon and
Lucille Freemon
Complainants,


v

CC Docket No. 94-89
File No. E-90-393

American Telephone and Telegraph Company
Defendant.

Proposed Findings of fact and conclusions

1. Mr. Elehue Kawika Freemon, Complainant, herewith presents and files eight proposed findings of fact and conclusion in the above en-titled matter, the same having been fully heard.
2. Findings and conclusions are proposed and presented herewith under the provisions of the Federal Administrative Procedure Act and CFR 1.264
3. Dated January 28, 1995.



Complainant Elehue K. Freemon
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Big Bear Lake, CA. 92315

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Proposed Findings of fact and conclusions

1. The Above-entitled proceeding having been fully heard by and submitted to Walter C. Miller, Administrative Law Judge duly assigned, the Secretary of Federal Communications Commission; all the parties having appeared by their respective attorneys and the record of the proceeding, consisting, of a transcript of the hearing and all evidence received thereat and all pleadings, affidavits and other papers filed by the several parties, having been prepared, and the whole thereof duly considered, the following Findings of Fact are hereby made from the entire record:

2. IN compliance with the Hearing Designation Order released on August 12, 1994 by the Federal Communication Commission Pursuant to Sections 4(i), 4(j), 201, 206, 207, 208, 209 and 705 of the Communications Act of 1934, as amended, 47 U.S.C. -- 154(i), 154(j), 201, 206, 207, 208, 209 that the above-captioned supports the jurisdiction of this agency over the parties and subject matter.

3. Findings of Fact

4. In the interest of continuing to narrow the issues and material facts the complainant(s) will use the Hearing Designation Order released on August 12, 1994 by the Federal Communication Commission as a guideline at IV. ORDERING CLAUSES Number 11., 11.1, 11.2, 11.3, 11.4., 11.5, 11.6.

5. The commission has inquired if a "... telephone conversation ensued between Elehue K. Freeman and Lucille Freeman on May 30, 1988 at the time an AT&T operator handled the operator-assisted call at issue.", the answer is **YES** that **there was a conversation between Mr. Elehue K. Freeman and Mrs. Lucille K. Freeman on May 30, 1988 at approximately at 2300.**¹
6. The facts concur to this Yes answer from Ms. Nancy Zolnikov during AT&T's deposition on November 7, 1994 in Oregon conducted by AT&T's attorney Mr. Peter Jacoby.
7. As so stated at Nancy Zolnikov AT&T deposition on November 7, 1994, page 67, line 13 through page 73, line 10.
8. On page 67, lines 14 to 15 Ms. Nancy Zolnikov was questioned by Mr. Elehue K. Freeman, Q." ... in this case, am I correct, that I said, " Hello, Mom, " and my mother started to talk? " .
9. " In this case", case Docket No. 94-89, and " that I said " , I as recognized to be Mr. Elehue K. Freeman , Mr. Elehue K. Freeman's questioning is referring to the May 30, 1988 collect telephone call and the beginning of the conversation between Mr. Elehue K. Freeman and Mrs. Lucille K. Freeman at approximately 2300 occurring, giving Mr. Jacoby for stating his objections of a possible mischaracterization of Ms. Nancy Zolnikov's own testimony on Page 70, line 18 to page 71 line 2.
10. The statement by Mr. Jacoby has no grounds for his objection towards Mr. Elehue K. Freeman's examination in stating " She hasn't testified about your conversation or even that one took place. " on page 71, line 1 to 2
11. The following passages on page 71, line 4, clarified for Mr. Jacoby and his concern from Mr. Elehue K. Freeman's questioning.
12. At page 71, line 4 through line 23 to which now confirms her understanding of " that I said, " Hello Mom " (at page 67, line 14 to 15) to only mean this case Docket No. 94-89 and no other meaning.
13. Mr. Jacoby also comments to his understanding at page 71, line 15 and 16 to the clarification of the identity of caller and callee.
14. Page 71, line 18 to page 72 line 4 is also referenced by AT&T's Answer 29 again demonstrating a single line of thought, case Docket No. 94-89.
15. This section Page 71, line 18 to page 72 line 19 is asking Ms. Nancy Zolnikov to explain the steps of the call in identifying the parties on the night of May 30, 1988.

¹ See FRE 901 (a) ; United States v Whittington (1986)

16. At page 72, line 7, Mr. Elehue K. Freemon " Q. All right. And then you let them talk?" at page 72, line 8 **Ms. Nancy Zolnikov's replies** " A. Yes ".

17. At page 72, line 9 to 19 Ms. Nancy Zolnikov describes how she let the conversation continue for an undetermined amount of time when she stated while she was busy helping " other customers. " at page 72, line 14, .

18. The complainant believes since it is unknown to Ms. Nancy Zolnikov how long the parties spoke we must now submit the approximate time of eight minutes as stated at AT&T Ex. 7, page 4, paragraph 2, line 7 of the Complainants Statement of Events, Formal Complaint, August 16, 1990.

19. At this point page 72, line 23 to 25, Mr. Jacoby understood the **FACT** that Ms. Nancy Zolnikov stated YES to assisting Mr. Elehue K. Freemon and Ms. Lucille in completing the collect call connection for a regular conversation as so stated by AT&T Ex. 7, page 4, paragraph 2, lines 1 to 4 and line 7 of the Complainants Statement of Events, Formal Complaint, August 16, 1990.

I. Interception and Disclosure

20. To the question at IV. ORDERING CLAUSES 11. (3) whether AT&T intercepted and disclosed the contents or meaning of any telephone call on May 30, 1988, between the time of approximately 2300 and 2400 hours Mr. Elehue K. Freemon will now submit the following facts and objection.

21. Eavesdropping as defined in the Webster's New World Dictionary " to listen secretly a to a private conversation.

22. To this end there must be also the opportunity, means , motive and a recipient (divuglee) to eavesdrop.

23. The means to eavesdrop was the telephone switching console electronic equipment allegedly a Traffic Service Position System TSPS No. 1B as stated by AT&T Mr. Sharpe at AT&T's Ex. 4 (B), page 4, line 5 to 6.

24. The understanding from Mr. Sharpe's testimony is that the described equipment was used in normal operation and or being used to make a normal collect call as indicated in Mr. Elehue K. Freemon's Formal Complaint Testimony that Mr. Sharpe stated at AT&T's Ex. 4 (B), page 5, line 8 through page 6, line to 14.

25. Take particular note at page 6, line 4 to line 7 to which Mr. Sharpe states "...After the transmission path was established and call acceptance obtained, in the ordinary course the operator would release the position and turn to processing other calls.

26. As the facts show above (paragraph 24 , this text) normal operation **did not occur** according to Ms. Nancy Zolnikov deposition testimony at 69 line 4 to line 13; page 69, line 25 through page 70, line 7 as a witness under FRE 901 (b) (1) ;. See from Ms. Nancy Zolnikov's Deposition page 68 line 18 and 19.

27. Therefore there is No correlation to Mr. Sharpe's testimony due to the fact that Ms. Nancy Zolnikov has stated that an emergency call was in progress and emergency procedures were in effect as per her deposition on November 7, 1994 in Oregon on page 69, line 4 to line 14 and continuing to page 69, line 25 to page 70, line 3.

28. This is also upheld by the AT&T Traffic ticket made after the incident on May 30, 1988 by Ms. Nancy Zolnikov of an AT&T emergency pertaining to Mr. Elehue K. Freeman at AT&T's Ex. 8, Answer, Exhibit A, CALL TICKET .

29. Though Mr. Sharpe may be quite familiar with the equipment used by Ms. Nancy Zolnikov it is an undisputed fact **he did not operate** said equipment on May 30, 1988 at approximately 2300 **nor was he present at the time when said equipment was used by Ms. Nancy Zolnikov.** ²

30. Operation of board is explained by Ms. Nancy Zolnikov Deposition page 73 line 23 to page 84 line 25. This is to the normal operation and certifies a definite change when in emergency procedure situation as defined by 3. Principles of Handling Emergency Calls; 3.01 The Most Significant Items in Handling Emergency Calls Are: (e) and Ms. Nancy Zolnikov Deposition page 84 line 18 to 22.

31. We also have a difference of opinion from Ms. Nancy Zolnikov's Deposition of permanently releasing the line. page 81 line 1 to 5 and line 22 to 25 ; page 88 line 25 to page 89 line 7; ("It's gone to heaven.") statement at page 81 line 2

32. Reinstating a line by the use of a flashback, page 88 line 9 to 15, is not generally known to today's modern telephone user as in the past with older switchboards, from Ms. Nancy Zolnikov's Deposition page 88 line 4 to 6.

33. Therefore though we appreciate his narration of the TSPS No. 1B limited to **normal** operation use, Mr. Sharpe can not testify to the full procedural operation of how Ms. Nancy Zolnikov used the TSPS No. 1B on the night of May 30, 1988 between 2300 and 2400 hours, AT&T Ex. 4 (B) page 5 line 8 to page 6 line 14 versus AT&T's Emergency procedures.

34. By reading the following paragraphs we can see the possibilities not covered in Mr. Sharpe's report by the operation of the console by Ms. Nancy Zolnikov, the human aspect and her November 7, 1994 deposition testimony by AT&T;

² See FRE 901 (a) ; United States v Whittington (1986)

35. AT&T's Privacy of Communications Text; AT&T Evidentiary Ex. 4, page 1, (P.5); par. 5 and 6, prints that there are two exceptions to these paragraphs; " except (as authorized by the customer or (in par. 5)) as required in the proper management of the business. ", in par. 6.

36. In the management of the business, emergency calls AT&T OSOP manual,

37. " Division C Section 21 March 1980; 3. Principles of Handling Emergency Calls; 3.01 The Most Significant Items in Handling Emergency Calls Are:

38. (e) **Take whatever action appears necessary to give the service needed, deviation from operating procedures when necessary.** "

39. " Take what ever action is necessary ... " does not limit but gives Ms. Nancy Zolnikov unlimited options to alter any normal procedures and therefore disregard any of AT&T's written procedures for conducting business in general, any emergencies and possibly disobey laws of the U.S. (though she may be unaware of such laws and regulations) and gives her total freedom in the physical operation of the her console to accomplish her emergency tasks.

40. Mr. Sharpe's comments rely only on the comments of the Complainant and therefore limit his view on the total possibilities of the workings of the console by Ms. Nancy Zolnikov on the night of May 30, 1988, approximately. 2300.

41. All possibilities must be explored and only AT&T has the answers for the complete possible use of the console used on May 30, 1988 by Ms. Nancy Zolnikov.

42. The complainant cites FRE 901 (a) for the requirement as to authentication to the actions taken by Ms. Nancy Zolnikov with use of the electronic device TSPS No, 1B on May 30, 1988 in a AT&T's emergency situation.

43. Therefore in keeping with in good faith of the law the court can not expect for Mr. Sharpe to lay the necessary foundation under FRE 901 (a), FRE 901 (b) (1) when he has not read all of the proper case materials such as any of Ms. Nancy Zolnikov's Deposition and in consideration of AT&T's Emergency Procedures 3.01. All of these and more are necessary to come to a concise conclusion before presenting Mr. Sharpe's results to the court .

44. Without the means of proper deduction it is impossible for Mr. Sharpe to examine the actions of Ms. Nancy Zolnikov at her console and testify in this case Docket No. 94-89,³

45. We also wish to bring to the attention to the Commission, and Judge W. Miller and all parties concerned that the 911 evidence or as described by the Commission (FCC)

³ Fortier v Dona Anna Plaza Partners (1984, CA10 NM) 747 F2nd 1324, 17 Fed rules evid Serv 612

as incident #1254 was rejected by Judge W. Miller though the Commission has stated at HEARING DESIGNATION ORDER, Released: August 12, 1994, page 2, footnote 6, line 5 to line 10 in which the Commission did grant it as a administrative evidence to record.

46. The reasons for the rejection of this material by Judge W. Miller was stated at Transcript of Proceedings, Volume: 2, page 88, line 1 through page 92, line 21.

47. The reason cited by the judge is one of authenticity and is said " ... the late file pleading is not in evidence ... ", " ... Therefore, there's no factual predicate upon which to base this material.

48. Secondly the judge comments further that " ... it (911 transcripts) assumes facts not in evidence, namely that what went on in the late filed -- late pleading reply is in evidence and it isn't..

49. On page 92, line 2 through 18 Mr. Elehue K. Freemon tried to object to the rejection by Judge W. Miller but was cut off at page 92, line 19 through line 21.

50. On page 92, lines 9 through 14 Mr. Freemon further attempted to give reason to the entry of said evidence 911 transcripts, incident #1254 as also previously on page 90, lines 9 through 15 and page 57, line 17 through page 58, lines 9, again cut off from speaking to the record.

51. Until the readmission of the previously received evidence by the Commission as #1254 (911 Oregon transcripts) the secret of the identity of the divulger and the divulgee can not be discovered.

52. Mr. Elehue K. Freemon further cites that the incident #1254 was properly admitted under FRE 901 (b) (7) . Public records are regularly authenticated by proof of custody, without more, and this principle is extended to include data stored in computers. The letter head and signature found on these documents are considered official seal of office by the management in position of said office at the City of Portland Oregon, Bureau of Emergency, Memorandum by Mr. Paul Stein, then Assistant Director.

53. Let it be brought to the attention of the court that the HEARING DESIGNATION ORDER, Released: August 12, 1994, page 1, II.3; page 2, footnote 6, line 5 to line 10, mentions that AT&T had significant time to challenge (and did attempt to reply), and to verify the authenticity of this document #1254.

II. Emergency under False Light toward the Complainant

54. As to the motive the operator had already in her mind perceived an emergency before approaching Mrs. Lucille K. Freemon and the 911 service.⁴

55. This is apparently shown in how she followed AT&T Operator Service Operating Procedure OSOP.

56. AT&T OSOP manual, Division C Section 21, March 1980; 3.0 Principles of Handling Emergency Calls; 3.01 The Most Significant Items in Handling Emergency Calls Are:

57. (e) **Take whatever action appears necessary to give the service needed, deviation from operating procedures when necessary.**

III. Medical Emergency perceived only by AT&T and then recommended to Mrs. Lucille K. Freemon

58. There was an Emergency from the AT&T operator Ms. Nancy Zolnikov but not from Mrs. Lucille K. Freemon as the facts establish.

59. Ms. Nancy Zolnikov was the first to establish a medical emergency at Text; AT&T Answers, Page 7, par. 28 before attending to other customers while the complainants spoke.

60. Mrs. Lucille K. Freemon has testified that it appears to be stating that the operator was first to approach Mrs. Lucille K. Freemon to ask permission to get help / **for an emergency for her son**, not Mrs. Lucille K. Freemon asking the operator for help first. Text; AT&T Deposition of Mrs. Lucille K. Freemon on October 4, 1994; Mrs. Lucille K. Freemon affidavit 01, Page 14 of exhibit 7, line 17 to 27.

61. Mrs. Lucille K. Freemon's affidavit testimony states that the Operator entered upon the first call with an emergency announcement after the brief conversation with her son Mr. Elehue K. Freemon at Text; AT&T's Evidence; Mrs. Lucille K. Freemon affidavit 01, exhibit 7, Page 14, lines 10 to 14 also at Text; AT&T's Evidence; Mrs. Lucille K. Freemon affidavit 01, exhibit 7, Page 13, lines 17 to 27.

62. The facts appear to be stating that the operator approached Mrs. Lucille K. Freemon to ask permission to get a plea of help / **for an emergency for her son**. Mrs. Lucille K. Freemon did not ask the operator for help for her son first, but on recommendation from the AT&T operator, whom she trusted, she gave permission to

⁴ See Text: AT&T Ex 3 page 1, (line 6 to 9) General 1.01 When to Give Emergency Handling.

call for assistance, excluding the police. See Text; AT&T's Evidence; Mrs. Lucille K. Freemon affidavit 01, exhibit 7, Page 14, lines 23 to 27. ⁵

IV. Reasonable Standard of Proof

63. As to the stated opinion of Mrs. Lucille Freemon if an emergency is found at Text; AT&T's Evidence; Mrs. Lucille K. Freemon's Deposition Page 36, line 25 to Page 37, line 2 to She states '...he may have a fever ..' and also has characterized it as a cold in her deposition.

64. The complaint cites IN RE BALLAY 482 F2d 648 (1973) to the Standard of Proof in regards to non mentally ill and mentally ill citizens, as not to endanger the privilege against self-incrimination as it occurred on the telephone between AT&T Ms. Nancy Zolnikov and Mrs. Lucille K. Freemon and put into record with a state agency (police and hospital personnel). See Simon v. Watson at 539 S.W. 2d 951 to protect their rights of due process.

65. AT&T's Privacy of Communications at Text; AT&T Evidentiary Ex. 4, page 1, (P.5); par. 5 and 6 contains two exceptions to these paragraphs; " except (as authorized by the customer or (in par. 5)) as required in the proper management of the business. ", in par. 6.

66. In the management of the business , emergency calls AT&T OSOP manual, Division C Section 21 March 1980; 3. Principles of Handling Emergency Calls; 3.01 The Most Significant Items in Handling Emergency Calls Are:

67. (e) **Take whatever action appears necessary to give the service needed, deviation from operating procedures when necessary.**

68. " Take what ever action is necessary ... " does not limited but gives Ms. Nancy Zolnikov unlimited options to alter any normal procedures whether procedural in the written AT&T materials for conduct and the laws of the U.S. (and may be unaware of such laws and regulations) or in the operation of the console to accomplish her emergency task.

69. This idea of no guidelines for anyone in the communications business violates within the meaning of Section 705 Communication act of 1934 and as amended in 47 U.S.C. all that is.

70. In turn the basis of Due process is threaten.⁶

Conclusion

71. In conclusion the complainant Mr. Elehue K. Freemon therefore submits these facts of record;

72. In answer to the allegation that an " ... telephone conversation ensued between Elehue K. Freemon and Mrs. Lucille Freemon on May 30, 1988 at the time an AT&T operator Ms. Nancy Zolnikov was handling the operator-assisted call at issue. ", it has been concluded that **YES, there was a conversation between Mr. Elehue K. Freemon and Mrs. Lucille K. Freemon on May 30, 1988 at approximately at 2300 hours.**

73. The circumstantial evidence can not be ignored by any reasonable person to the existence of eavesdropping and divulgence through the existence of a " ... telephone conversation ensued between Elehue K. Freemon and Lucille K. Freemon on May 30, 1988 with an AT&T operator identified as Ms Nancy Zolnikov.

74. The incident #1254 was improperly rejected under FRE 901 (b) (7) for Public records the proof of custody by the City of Portland Oregon, Bureau of Emergency, with the letter head of said office and the Signature found on these documents are considered the official seal of said office by the management in position of said office at the City of Portland Oregon, Bureau of Emergency, Memorandum by Mr. Paul Stein, then Assistant Director.

75. The objection from complainant was denied entry into record by Administrative Law Judge Walter C. Miller.

76. Further attempts to verify this document (though already entered by the Commission) were done by Mr. Elehue K. Freemon by way of Mr. Paul Stein's affidavit to the 911 document and identification of all workers participating in the production of said document.

77. The Commission received the incident #1254 (911 Oregon transcripts) into record on July 20, 1994.

78. The Commission appeared to understand the weight put forth by this evidence incident #1254 as to possibly hold the answer of interception and disclosure through the identification of the divulger, Ms. Nancy Zolnikov and the divulgee the 911 message taker. The explanation of the words spoken in its " field" on the computer print out would bring the proper conclusion to this case.

79. Therefore only with a full investigation by the FCC electronic experts familiar with said consoles and field experimentations will we understand the full possibilities of the TSPS No.1B. This investigation must be conducted to ensure that there is no violation of the due process of Mr. Elehue K. Freemon, Mrs Lucille K. Freemon, Ms. Nancy

Zolnikov, and/or AT&T, since all attempts by Mr. Elehue K. Freemon to enter records have been hindered.

80. The conclusion of Ms. Nancy Zolnikov ("It's gone to heaven.") and her flashback can only be established by the use of this document Incident #1254.

81. To this end the complainant believes that the Commission should find this hearing to have been greatly tinted to the truth due to the rejection of the 911 evidence (incident #1254).

82. As to the motive of the AT&T operator Ms. Nancy Zolnikov had already in her mind perceived an emergency before approaching Mrs. Lucille K. Freemon and the 911 service.

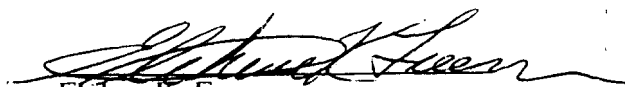
83. This is apparently shown in how she followed AT&T Operator Service Operating Procedure OSOP, emergency calls AT&T OSOP manual, Division C Section 21 March 1980; 3. Principles of Handling Emergency Calls; 3.01 The Most Significant Items in Handling Emergency Calls Are: " ... 3.01 (e) Take whatever action appears necessary to give the service needed, **deviation from operating procedures when necessary.** "

84. This procedural deviation is an inadequate safe guard for the protection of not only the right of privacy on America's telecommunications system but also to the further degradation of all U. S. citizens right of due process.

85. We as the American people have not the right but the continuous burden to protect the freedom of expression in this new Age of Information and if any Due Processes that may come a part of our every day lives not only in America but world wide

86. Therefore upon careful consideration of the evidence submitted to the Federal Communication Commission and the presiding Administrative Law Judge of CC Docket No. 94-89 I request the a decision to be entered in this matter in favor of complainant Elehue K. Freemon.

Sincerely,



Elehue K. Freemon
Complainant
General Delivery
Big Bear Lake, CA 92315
(909) 866- 8714

STATE OF CALIFORNIA)

: ss.:

COUNTY OF ORANGE)

I, ELEHUE KAWIKA FREEMON, being duly sworn deposes and says:

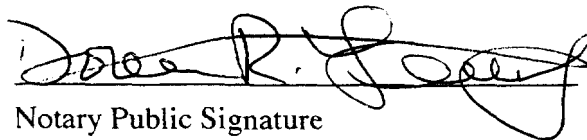
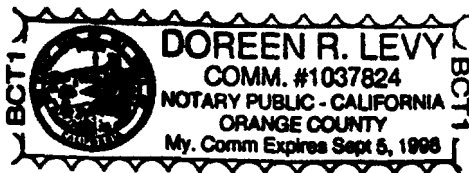
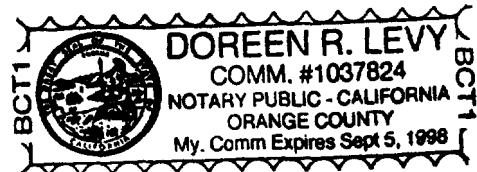
I hereby swear that the forgoing **Proposed Findings of fact and conclusions**
proposed and presented herewith under the provisions of the Federal
Administrative Procedure Act and CFR 1.264 to be true and correct to the best of
my knowledge and belief.



Elehue K. Freemon

Complainant

Sworn to before me this 28 th day of January 1995


Notary Public Signature

Notary Seal

January, 28, 1995

Date

Certificate of Service

I, Dr. Gisela Spieler, hereby certify that a true copy of the foregoing "**Proposed Findings of fact and conclusions**" was served on the 28th day, January, 1995 by United Parcel Service (*), and/or U.S. mail, postage prepaid upon the parties listed below:

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